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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,657	12/28/2005	Victor Gonzalez De Echavarri	TJA-114US	2390
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			EXAMINER JOYNER, KEVIN	
			ART UNIT 1744	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,657

Applicant(s)

GONZALEZ DE ECHAVARRI,
VICTOR

Examiner

Kevin C. Joyner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) 4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

- I Directed to an embodiment as shown in Figure 2
- II Directed to an embodiment as shown in Figure 4

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

2. The claims are deemed to correspond to the species listed above in the following manner:

Species I directed to claim 4

Species II directed to claim 3

The following claim(s) are generic: claim 1.

3. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons:

As stated under PCT Rule 13, a group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. The expression special technical feature is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art. The single general inventive concept and special technical feature in the instant application comprises the limitations set forth in reference to claim 1. However, this conventional teaching is taught by Baek (U.S. Patent No. 5,957,771) in view of Kuhn (U.S. Patent No. 5,364,027) and Furner et al. (U.S. Patent No. 6,610,254). Therefore, the single inventive concept cannot be considered a special technical feature because it does not make a contribution over the prior art.

Consequently, the inventions listed as Species I and II do not relate to a single general inventive concept.

4. During a telephone conversation with Mr. Jacques Etkowicz on May 3, 2007 a provisional election was made without traverse to prosecute the invention of Species II, claim 3. Affirmation of this election must be made by applicant in replying to this Office

action. Claim 4 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 2 recites the limitation "the deposit" in line 5. There is insufficient antecedent basis for this limitation in the claim. The office suggests the applicant to distinguish the two deposits by referring to them as, "a first deposit and a second deposit."

4. Claim 3 recites the limitation "the deposit" in lines 3 and 5. This limitation is unclear as to which deposit is being referenced to. The office suggests the applicant to distinguish the two deposits by referring to them as, "a first deposit and a second deposit."

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baek (U.S. Patent No. 5,957,771) in view of Kuhn (U.S. Patent No. 5,364,027) and Furner et al. (U.S. Patent No. 6,610,254).

Baek discloses a multipurpose dispenser, to dispense a product comprising:

A frame provided with a wall support means and a front cover

At least one deposit for a product to be dispensed,

At least one dispensing mechanism (200) activated by driving means, and

Where said deposit incorporates a valve (222a), which in the top part thereof has a push-button (222) that is activated by a pusher element (211) driven by the movement of a motor that is transmitted via gears,

Said motor being controlled by a control plate, which in turn controls and combines the operation of said motor with that of another motor (318) that drives a fan (23) which circulates the air that is in contact with a product located in the deposit, all this being combined in a simultaneous or alternative fashion, according to the control plate (304), (columns 4 & 5, lines 57-68 A& 1-19; column 6, lines 12-26; column 6, lines 35-50) as shown in Figures 4-6.

Baek does not appear to disclose two deposits, wherein the second deposit comprises a product evaporated by a cord located on the other of said deposits. Kuhn discloses a multipurpose dispenser for use to dispense a product comprising; a frame provided with wall support means and a front cover, at least one deposit (9) for a product to be dispensed, and a second deposit comprising a product evaporated by a

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cord (10) in order to provide an apparatus that may provide a continuous release of an aroma or an instant release of a large charge of an active substance (column 1, lines 5-40, column 2, lines 22-53). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the dispenser of Baek to include a second deposit comprising a product evaporated by a cord in order to provide the dispenser with a second deposit that can continuously release an aroma over a long period of time.

Baek in view of Kuhn does not appear to disclose that the multipurpose dispenser is battery operated. Furner discloses a multipurpose dispenser for use with batteries to dispense a product comprising; a frame provided with wall support means and a front cover (Figure 1), two deposits for products to be dispensed (column 5, lines 32-54), where one of said deposits incorporates a valve, which in the top part thereof has a push-button that is activated by a pusher element (column 7, lines 55-68), and a fan that which circulates the air that is in contact with a product to be evaporated (column 14, lines 55-68). The reference continues to disclose that the dispenser uses batteries as the power source to dispense the product (column 15, lines 1-7) in order to provide the dispenser with a power source that does not limit the portability of the device. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the dispenser of Baek in view of Kuhn to include batteries as a power source for the dispenser in order to provide the dispenser with a source of power that does not limit the portability of the dispenser.

Concerning claim 2, Baek discloses that the cover comprises grating in the top and bottom parts thereof, which cause the air current generated by the fan to circulate through them and the circulating air to come into contact with the product as shown in Figures 3 and 4. Baek does not appear to disclose gratings in the central portion of the cover. Kuhn continues to disclose that the cover (3) comprises gratings in the top, central, and bottom portions thereof, which cause the air current to circulate through them and the circulating air to come into contact with the product evaporated from the deposit by the cord in order to provide the maximum amount of vents to allow air to reach to product and ultimately dispense the product into the atmosphere (column 2, lines 24-50) as shown in Figure 2. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the dispenser of Baek to include grating in the central portion of the cover in order to maximize the amount of air that is capable of reaching the product to ultimately dispense more of the product into the atmosphere as exemplified by Kuhn.

Regarding claim 3, Baek in view of Kuhn does disclose that said push-button is a sprayer push button (column 4, lines 56-68). However, Baek in view of Kuhn does not appear to disclose that the product is dispensed directly into the outside atmosphere via a window included for this purpose in the front cover of the dispenser, in simultaneous or alternative combination with the dispensing of the product contained in the deposit by means of said gratings. Furner continues to disclose that said button is a sprayer push button (3) which dispenses the product contained in the deposit directly into the outside atmosphere via a window (20) included for this purpose in the front cover of the

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dispenser, in simultaneous or alternative combination with the dispensing of the product contained in the deposit (30) by means of said gratings (6) in order to provide an instant application of the product to the outside atmosphere as shown in Figure 2 and disclosed in column 7, lines 30-68. More specifically, the evaporated product is continuously given off while the sprayed product must be activated by the operator, which provides alternating or simultaneous combination of the two products. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the dispenser of Baek in view of Kuhn to dispense the product directly into the outside atmosphere via a window included for this purpose in the front cover of the dispenser, in simultaneous or alternative combination with the dispensing of the product contained in the deposit by means of said gratings in order to provide an instant application of the product to the outside atmosphere as exemplified by Furner.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin C. Joyner whose telephone number is (571) 272-2709. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCJ



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SUPERVISORY PATENT EXAMINER